

REMARKS/ARGUMENTS

In the Non-Final Office Action of May 25, 2007 (the “Office Action”), Claims 1-19 and 49-50 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6,090,107 issued to Borgmeier et al. (“Borgmeier”) in view of U.S. Pat No. 5,496,315 issued to Weaver et al. (“Weaver”).

As shown in FIGS. 3-4 of Borgmeier, a flexible sheath 61 serves as a seal and insulating means by having a proximal end 80 that press fits over a sleeve 60 that houses a tip 16 and a distal end 82 with inner collar 84 that fits over insulative material 58 of a portion of the tip 16 extending out of the sleeve 60. See Col. 5, line 4 to Col. 6, line 49. Because flexible sheath 61 makes its seal by press fitting at one end over the sleeve 60 and at the other end over insulative material 58 of the tip 16, internal sealing rings such as claimed in Claim 1 are not necessary.

Thus, Borgmeier does not teach an “insulative rigid sleeve” nor “first and second internal sealing rings” as claimed in Claim 1.

Therefore, the Office Action relies on Weaver for teaching the use of an O-ring 19 for sealing purposes, and posits replacing Borgmeier’s flexible sheath 61 with a rigid sheath and adding Weaver’s O-rings within the proximal end 80 and inner collar 84 of the sheath 61 to perform the sealing function.

Accordingly, Claim 1 has been amended to include the limitations of Claim 16, and Claim 16 has been canceled. Claim 16 recited “an insulation layer disposed at least

partially around the electrode and one of the first and second internal sealing rings so as to additionally inhibit fluid from entering into the interior of the insulative rigid sleeve and making contact with any portion of the electrode disposed therein during the minimally invasive surgical procedure", and such an insulation layer is believed to be neither taught nor suggested by Borgmeier or Weaver, alone or in combination with each other.

It is noted that although the Office Action rejects Claim 16 as being unpatentable under 35 USC 103(a) over Borgmeier and Weaver, it fails to point out where in either of those two references the "insulation layer" as recited in Claim 16 is disclosed or suggested.

It is also noted that if the outer collar 86 of Borgmeier's sheath 61 is presumed to be rigid, in order to reject Claim 1 as explained above, then it cannot form a seal by press fitting over the insulative material 58 and "*additionally* inhibit fluid from entering into the interior of the insulative rigid sleeve" as required of the "insulation layer" in amended Claim 1 and accordingly, cannot teach such "insulation layer". In this case, only the O-ring placed in the inner collar 84 of the sheath 61 inhibits fluid from entering on that side.

Accordingly, Claim 1 is believed to be patentable under 35 USC 103(a) over Borgmeier in view of Weaver for at least the foregoing reasons.

Claims 2-15 and 17-19 are also believed to be patentable under 35 USC 103(a) over Borgmeier in view of Weaver since they depend from Claim 1, and as such, are believed to be patentable for at least the same reasons as stated in reference to Claim 1.

Also, Claim 49 has been amended to include the limitations of Claim 50, and Claim 50 has been canceled. Claim 50 recited "disposing an insulation layer at least partially around the electrode and one of the first and second internal sealing rings so as to additionally inhibit fluid from entering into the interior of the insulative rigid sleeve and making contact with any portion of the electrode disposed therein during the minimally invasive surgical procedure", and such a disposing of an insulation layer is believed to be neither taught nor suggested by Borgmeier or Weaver, alone or in combination with each other.

It is further noted that although the Office Action rejects Claim 50 as being unpatentable under 35 USC 103(a) over Borgmeier and Weaver, it fails to point out where in either of those two references the "disposing of an insulation layer" as recited in Claim 50 is disclosed or suggested.

Accordingly, Claim 49 is also believed to be patentable under 35 USC 103(a) over Borgmeier in view of Weaver for at least the foregoing reasons, as well as those stated in reference to Claim 1 that are applicable.

Claims 1-15, 17-19 and 49 are pending in the application. Claims 16, 20-48, and 50-52 are cancelled. Reconsideration of the rejected claims is respectfully requested in light of the arguments set forth herein, and an early notice of their allowability earnestly solicited.

Respectfully submitted,

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